

Arizona Supreme Court Task Force
on the Code of Judicial Conduct
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**IN THE SUPREME COURT OF
THE STATE OF ARIZONA**

**PETITION TO ADOPT A NEW CODE OF JUDICIAL CONDUCT
AND MOTION FOR EXPEDITED CONSIDERATION**

A. PETITION

The Arizona Supreme Court Task Force on the Code of Judicial Conduct (“Task Force”) hereby petitions the Court, pursuant to Rule 28, Rules of the Arizona Supreme Court, to adopt a new Arizona Code of Judicial Conduct (“Code”) based on Model Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association in February 2007. The Court has used successive versions of the Model Code, initially to draft the Arizona Code in 1975 and then to revise it in 1993. Approval of a new ABA Model Code provided a timely opportunity to bring the current state code up to national standards.

The purpose of the Task Force, as set forth in Administrative Order 2007-36 (April 26, 2007), is to review the Model Code and to recommend changes, if appropriate, in the current Arizona Code as contained in Rule 81, Rules of the Supreme Court. The Court further instructed the Task Force to examine the structure and format of the two codes, the content of individual canons and rules, and the relationship of the canons to each other in light of the unique character and customs of our state and the methods employed throughout the state to select, appoint and elect judges.

Early in the process, the Task Force determined that the Model Code retains the key provisions of the previous version, upon which the current Arizona Code is based, but in a new and improved format that will better serve both the public and the judiciary. The Task Force decided, therefore, to recommend the adoption of the Model Code, with appropriate changes for our state, rather than attempt to amend the existing Code to conform to the Model Code.

The Task Force met 18 times to consider each provision of the Model Code and develop recommendations for changes. In keeping with its mandate, the Task Force identified numerous changes to make the Code more relevant and useful to the Arizona judiciary. The Task Force's final recommendations are described in detail in the attached Task Force Report and three appendices that present the proposed code in different formats designed to assist the Court in understanding and analyzing the recommendations.

B. MOTION TO EXPEDITE CONSIDERATION AND ADOPTION

The Task Force on the Code of Judicial Conduct strongly recommends expedited consideration and adoption of a new Arizona Code of Judicial Conduct pursuant to Rule 28(G), Rules of the Arizona Supreme Court. Specifically, the Task Force recommends a sixty-day comment period beginning no later than February 27, 2009, and adoption of the new Code of Judicial Conduct before September 2009. There are three principal reasons supporting expedited consideration and adoption.

First, the election cycle for the 2010 primary and general elections will begin by September 2009. It is critical that judicial candidates be informed of and abide by one set of rules governing judicial campaigns. The changes to the Code governing judicial campaigns are not insubstantial. *See e.g.*, proposed Rule 4.3. Under the usual schedule of Rule 28(F), approval

of the rules would not likely occur until late fall with an effective date of January 1, 2010. This schedule creates the possibility that judicial candidates would start their campaigns under one set of rules, but finish with a different set. If advisory opinions or judicial complaints were filed, issues regarding retroactivity would likely arise. Moreover, campaign matters frequently envelope constitutional rights. A mid-campaign change of rules can be avoided by early adoption of the Code. This reason, standing alone, is a “compelling circumstance” that invokes the Rule 28(G) exception. *See* Comment to 2005 Amendment.

The second reason for early adoption is entirely pragmatic: the entire Arizona judiciary is aware of ongoing efforts to update the Code, and various groups (*e.g.*, Judicial Ethics Advisory Committee) are beginning to consult the Model Code on matters of interpretation. Extending the time for consideration is unnecessary and actually engenders confusion about which set of rules is authoritative.

The Arizona judiciary has had multiple opportunities to provide direct and indirect input to the Task Force on the proposed Arizona Code. Their input is incorporated into the proposed Code, and they will still have the opportunity make comments during the sixty-day period. The public was invited to comment on the proposed Arizona Code. Lay input was limited, but it was also taken into consideration. Unlike some proposed rules that have limited exposure before the rules petition is filed, the Task Force specifically and intentionally sought wide exposure and comment on its proposal. The sixty-day comment period will be more than sufficient to allow any person to make a “final argument” to the Court.

Consideration by various groups of the new Model Code, particularly in the context of this Court’s direction to the Task Force to draft a new Arizona Code, has the potential to create

confusion. Which is (or will be) the authoritative code? Expedited action by this Court limits the possibility of confusion and provides clear guidance to those groups who reasonably believe that there will be a new Arizona Code that is largely based on the new Model Code.

The final reason is also pragmatic: the Task Force is aware that the Rule 28(F) schedule can result in consideration of scores of rules petitions at one time. Without denigrating the importance of other rules petitions, the Task Force respectfully suggests that the Court's separate consideration of this petition is required by the scope and magnitude of the changes.

For the foregoing reasons, the Task Force on the Code of Judicial Conduct recommends that the Court approve the proposed new Arizona Code of Judicial Conduct to replace Rule 81 of the Rules of the Supreme Court and moves, pursuant to Rule 28(G), that the Court schedule the petition for comment and consideration by the Court on an expedited basis.

RESPECTFULLY SUBMITTED THIS 9th day of January, 2009

TASK FORCE ON THE CODE
OF JUDICIAL CODE

Peter Cahill, Chair